

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

UNITED STATES OF AMERICA

v.

ANGEL OCASIO

)
)
)
)
)

Case No. EP-11-CR-2728-KC-1

**NOTICE OF DEFENDANT'S COMPLIANCE WITH COURT'S ORDER
OF MAY 20, 2013**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Defendant in the above styled and numbered cause, by and through undersigned counsel, and advises this Court of his submission of documents in compliance with this Court's Order of May 20, 2013.

As an initial matter, Defendant, in his Motion to Reconsider, declared that "a subpoena has been directed to TLO, LLC demanding the materials held unavailable through this Motion to Compel." Order at 1. The conditional language of "[i]n the event this Court declines to reconsider its Order," *id.*, was not intended to imply inaction by the defense while awaiting this Court's decision, but rather an effort to address expeditiously the possible eventuality of a denial of reconsideration. Defendant thus directed the subpoenas to TLO, LLC through its registered agent for service of process, Derek Dubner, attached as Exhibit A, and William Wiltse, attached as Exhibit B, on May 1, 2013. These individuals were provided a demand for production of the specific materials requested with two specific forms of delivery for the materials requested, specifically by e-mail attachment or mail. To date, no compliance has been attempted. TLO, LLC has not contacted this Office in any way to explain its non-compliance with the subpoena, nor has it endeavored to contact this Court .

As this Court apparently anticipated action by the defense following the date of its Order rather than preceding it, and given the apparent inaction by TLO, LLC in response to duly issued subpoenas, Defendant will move for a show cause order directed to TLO, LLC demanding it respond why it should not be held in contempt for its non-compliance.¹

Respectfully submitted,,

MAUREEN FRANCO
Federal Public Defender

/s/

MICHAEL GORMAN
Assistant Federal Public Defender
Western District of Texas
Federal Building
700 E. San Antonio, D-401
El Paso, Texas 79901
(915) 534-6525

Attorney for Defendant

¹As TLO, LLC has effectively ignored the subpoenas for 3 weeks following receipt of service, it is unlikely a motion to quash would qualify as a “motion made promptly” for purposes of Federal Rule of Criminal Procedure 17(c)(2). Given the apparent independence of TLO, LLC, there may be questions as to standing in a response by the Government. The same may not be true of a response to an order to show cause, in which the Government is not itself requesting relief.

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of May, 2013, I electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to the following:

J. Brandy Gardes
Assistant U. S. Attorney
700 E. San Antonio, Suite 200
El Paso, Texas 79901

/s/

Michael Gorman
Attorney for Defendant

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case

UNITED STATES DISTRICT COURT

for the

Western District of Texas

United States of America)

v.)

ANGEL OCASIO)

Case No. EP-11-CR-2728-KC)

Defendant)

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: DUBNER, DEREK A., ESQ.
 c/o TLO, LLC
 4530 Conference Way South
 Boca Raton, FL 33431

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance: Federal Public Defender 700 E. San Antonio, Ste. D401 El Paso, TX 79901	Courtroom No.: Instantler
	Date and Time:

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

Please see attached requested information:

(SEAL)

Date:

5/1/13

CLERK OF COURT

WILLIAM G. PUTNEY

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (*name of party*)

Angel Ocasio, who requests this subpoena, are:

Michael Gorman, Assistant Federal Public Defender, 700 E. San Antonio, Ste. D-401, El Paso, TX 79901;
 916-534-6525.

DEFENDANT'S
EXHIBIT

A

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case (Page 2)

Case No. EP-11-CR-2728-KC

PROOF OF SERVICE

This subpoena for (name of individual and title, if any) DUBNER, PEREK A., ESQ., TLO, LLC
 was received by me on (date) 5-3-13.

☒ I served the subpoena by delivering a copy to the named person as follows:

VIA CERT MAIL - RR - 7006 2150 0004 9100 9828

on (date) _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 5-14-13

Cynthia M. Hernandez

Server's signature

Cynthia M. Hernandez, CP

Printed name and title

700 E. SAN ANTONIO CP, TX 79901

Server's address

Additional information regarding attestation

U.S. Postal Service (TM)
CERTIFIED MAIL (TM) RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL US

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent to PEREK DUBNER, ESQ., TLO, LLC
 Street, Apt. No., or PO Box No. 4530 CONF. WAY SOUTH
 City, State, ZIP+4 BOCA RATON FL 33431

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DUBNER, PEREK A., ESQ.
TLO, LLC
4530 CONFERENCE WAY SOUTH
BOCA RATON, FL
33431

2. Article Number (Copy from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature [Signature] ☐ Agent ☐ Address

D. Is delivery address different from item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchant
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7006 2150 0004 9100 9828

7006 2150 0004 9100 9828

U.S. v. Angel Ocasio
EP-11-CR-2728-KC

SUBPOENA ATTACHMENT A:

Please provide the following:

1. The source and object code, to include all non-compilable programmer comments provided in the same, of the application known as Child Protection System, as that System was implemented and in effect on April 11, 2011.
2. The source and object code of any application called by the Child Protection System when executing, to include any helper application. In the event any application called is non-proprietary and commercially available, identify the application and version called by the System in effect on April 11, 2011. If the application called is not commercially available, provide the complete source and object code, along with programmer comments, in effect on April 11, 2011.
3. Complete revision history of the Child Protection System and corresponding changes implemented by individual System revisions.
4. Project Management documentation utilized in the design and revision of Child Protection System, to include requirements management if utilized.
5. Any documentation describing and addressing known bugs or failures in the Child Protection System, along with corrective measures taken and dates such measures were implemented, if applicable.
6. FAQs, if provided to law enforcement officers or agents utilizing the System.

Please provide the above by attachment instant to e-mail address: michael_gorman@fd.org, or by mail in a generally accepted digital format to Michael Gorman, Assistant Federal Public Defender, 700 E. San Antonio, Ste. D401, El Paso, TX 79901.

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case

UNITED STATES DISTRICT COURT

for the

Western District of Texas

United States of America)

v.)

ANGEL OCASIO)

Case No. EP-11-CR-2728-KC)

Defendant)

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: DUBNER, DEREK A., ESQ.
 c/o TLO, LLC
 4530 Conference Way South
 Boca Raton, FL 33431

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance: Federal Public Defender 700 E. San Antonio, Ste. D401 El Paso, TX 79901	Courtroom No.: Instantner
	Date and Time:

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

Please see attached requested information:

(SEAL)

Date:

5/1/13

CLERK OF COURT

WILLIAM G. PUTNEY

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (*name of party*)

Angel Ocasio, who requests this subpoena, are:

Michael Gorman, Assistant Federal Public Defender, 700 E. San Antonio, Ste. D-401, El Paso, TX 79901;
 916-534-6525.

DEFENDANT'S
 EXHIBIT

B

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case (Page 2)

Case No. EP-11-CR-2728-KC

PROOF OF SERVICE

This subpoena for (name of individual and title, if any) DUBNER, DEREK A., Esq., TLO, LLC
 was received by me on (date) 5-3-13.

☒ I served the subpoena by delivering a copy to the named person as follows:

VIA CERT MAIL - RRR - 7006 2150 0004 9100 9828
 on (date) _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 5-14-13

Cynthia M. Hernandez CP
 Server's signature

Cynthia M. Hernandez CP
 Printed name and title

700 E. SAN ANTONIO CP, TX 79901
 Server's address

Additional information regarding attachment:

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL US

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent to DEREK DUBNER ESQ. / TLO
 Street, Apt. No.,
 or PO Box No. 4530 CONF. WAY SOUTH
 City, State, ZIP+4 BOCA RATON FL 33431

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DUBNER, DEREK A., ESQ.,
TLO, LLC
4530 CONFERENCE WAY SOUTH
BOCA RATON, FL
33431

2. Article Number (Copy from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature [Signature] ☐ Agent ☐ Address

D. Is delivery address different from item 1? ☐ Yes ☐ No

If YES, enter delivery address below:

3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchant ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7006 2150 0004 9100 9828

7006 2150 0004 9100 9828

U.S. v. Angel Ocasio
EP-11-CR-2728-KC

SUBPOENA ATTACHMENT A:

Please provide the following:

1. The source and object code, to include all non-compilable programmer comments provided in the same, of the application known as Child Protection System, as that System was implemented and in effect on April 11, 2011.
2. The source and object code of any application called by the Child Protection System when executing, to include any helper application. In the event any application called is non-proprietary and commercially available, identify the application and version called by the System in effect on April 11, 2011. If the application called is not commercially available, provide the complete source and object code, along with programmer comments, in effect on April 11, 2011.
3. Complete revision history of the Child Protection System and corresponding changes implemented by individual System revisions.
4. Project Management documentation utilized in the design and revision of Child Protection System, to include requirements management if utilized.
5. Any documentation describing and addressing known bugs or failures in the Child Protection System, along with corrective measures taken and dates such measures were implemented, if applicable.
6. FAQs, if provided to law enforcement officers or agents utilizing the System.

Please provide the above by attachment instant to e-mail address: michael_gorman@fd.org, or by mail in a generally accepted digital format to Michael Gorman, Assistant Federal Public Defender, 700 E. San Antonio, Ste. D401, El Paso, TX 79901.